

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Petition of the Marin Energy Authority, Alliance for Retail Energy Markets, City and County of Santa Cruz, Climate Protection Campaign, Constellation NewEnergy, Inc., Direct Access Customer Coalition, Direct Energy, LLC, Energy Users Forum, IGS Energy, Retail Energy Supply Association, Sam's West, Inc., Shell Energy North America (US), L.P., South San Joaquin Irrigation District, Texas Retail Energy, LLC, and Wal-Mart Stores, Inc. to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5.

P.12-12-010
(Filed December 18, 2012)

**RESPONSE OF MERCED IRRIGATION DISTRICT,
MODESTO IRRIGATION DISTRICT AND THE CALIFORNIA MUNICIPAL
UTILITIES ASSOCIATION TO PETITION TO ADOPT, AMEND, OR REPEAL A
REGULATION PURSUANT TO PUB. UTIL. CODE § 1708.5 OF MARIN ENERGY
AUTHORITY, ALLIANCE FOR RETAIL ENERGY MARKETS, ET AL.**

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Pursuant to Rule 6.3(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission” or “CPUC”), Merced Irrigation District (“Merced ID”) and Modesto Irrigation District (“Modesto ID,” together the “Districts”) and the California Municipal Utilities Association (“CMUA,” together with the Districts the “POU Parties”) file this Response to Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5 of Marin Energy Authority (“MEA”), Alliance for Retail Energy Markets (“AReM”), *et al.* (“Petition”).¹

I. Introduction.

MEA, AReM, *et al.* filed the Petition requesting that the Commission initiate a new Order Instituting Rulemaking (“OIR”) to focus on modifying cost allocation policies that inhibit the development of community choice aggregation (“CCA”) programs, and that more broadly inhibit the development of customer choice. The POU Parties support the Petition. Departing load charges have in many cases lasted well beyond their intended timeframes, creating

¹ In accordance with Rule 1.8(d), counsel for CMUA has authorized the Districts to file this Protest on behalf of CMUA.

unnecessary rate volatility and uncertainty for customers. As the Petition notes, non-bypassable charges affect all departing load. This includes municipal departing load (“MDL”) of the Districts. It is time to end or develop a plan for phasing out stranded cost recovery charges, including the Ongoing Competition Transition Charge (“Ongoing CTC”), and the Commission should grant the Petition and open a new OIR to do just that.

II. The Districts Provide a Beneficial Competitive Option.

A. The District Service Option.

Since 1919, irrigation districts have been formally authorized by the California Legislature to “provide for the acquisition, operation, leasing and control of plants for the generation, transmission, distribution, sale and lease of electric power”² The Districts provide electric supply and distribution services pursuant to that longstanding authorization.

The service territory within and outside of Merced ID’s boundaries where Merced ID provides retail electric service also lies within PG&E’s service territory. Both entities are authorized to provide service in the areas within and outside of Merced ID’s boundaries where Merced ID provides service and, therefore, both compete head-to-head to do so. Merced ID is also a PG&E customer. Under current Commission decisions, transferred and certain new MDL customers of the Merced ID are required to pay Ongoing CTC.³

Modesto ID is the exclusive provider of electric service in and around the City of Modesto and in the Mountain House Community Services District. The additional area Modesto ID serves that is commonly referred to as the “Joint Electric Distribution Service Area” (*i.e.*, the Cities of Escalon, Oakdale, Ripon, Riverbank and adjacent rural areas) also lies within PG&E’s electric service territory. Modesto ID and PG&E compete head-to-head to serve customers in that area. Under current Commission decisions, transferred and certain new MDL customers of the Modesto ID are required to pay Ongoing CTC.

B. Choice Benefits Customers.

Competition is a means to ensure reasonable, affordable prices. As described, both Districts compete with PG&E for customers, and that has been beneficial for customers. Sometimes customers choose Merced ID or Modesto ID, and sometimes they choose PG&E.

² Cal. Water Code § 22125.

³ Transferred MDL is defined generally as load that transfers from investor owned utility (“IOU”) service to publicly owned utility (“POU”) service. New MDL is defined generally as load associated with a facility that has never taken service from any utility that purchases or consumes power supplied by a POU.

This competition provides strong incentive to keep costs down and reliability up, which in turn contributes to economic development in Merced, Stanislaus, and San Joaquin Counties. The Commission has determined that competition between irrigation districts and PG&E benefits customers. For example, in 1998, the Commission rejected a long-term service area agreement and a sale of facilities agreement between PG&E and Modesto ID, determining to preserve the competition between PG&E and Modesto ID.⁴ The Commission found that competition would provide customers with a choice between electric service suppliers, and would drive lower costs.⁵

III. Ongoing CTC has Outlived Its Intended Purpose and Impedes Beneficial Competition.

The POU Parties strongly support the Petition’s proposal to phase out recovery of so-called “stranded costs” by the IOUs. As noted above, customers of the Districts are required to pay stranded costs recovered by the Ongoing CTC.⁶ Ongoing CTC affects MDL customers who departed IOU service up to 17 years ago. PG&E’s Ongoing CTC rate has fluctuated widely over the years, from as low as \$0.00013 per kWh in 2007 to \$0.00703 per kWh in 2004. The recently approved Ongoing CTC rate for 2013 for large customers is \$0.00272 per kWh. These wide fluctuations create significant uncertainty for customers. They are hard to plan for and manage during good economic times, and they are particularly harmful during the ongoing economic downturn.

Like the Petitioners, the POU Parties “are concerned that the same interminable fees will be imposed on their customers for unspecified durations.”⁷ The law authorizing Ongoing CTC did not contemplate open-ended cost recovery. The ongoing volatility and uncertainty surrounding the Ongoing CTC rate highlight the need for the Commission to honor principles underlying past efforts to phase out stranded cost recovery.⁸

It is time to revisit the Commission’s principles authorizing Ongoing CTC in the first instance, and develop a plan for phasing it out. Ongoing CTC was intended to address a very

⁴ D.98-06-020.

⁵ *Id.* at p. 15.

⁶ Direct access and CCA customers may be required to pay other stranded costs.

⁷ Petition, p. 11.

⁸ *See, e.g.*, D.11-07-010, Ordering Paragraph 2 (which, among other things, sets various timeframes for phasing out non-bypassable charges associated with the QF/CHP Settlement Agreement).

specific circumstance – the transition to a competitive generation market.⁹ When Assembly Bill (“AB”) 1890, the legislation authorizing CTC and Ongoing CTC, was adopted, there was no concept that Ongoing CTC would extend indefinitely. Under AB 1890, most CTC was either to be collected by the end of 2001 or foregone.¹⁰ However, the Legislature allowed certain costs to be collected after that date, under specific limited circumstances. This category of CTC is referred to as Ongoing CTC. In general, Ongoing CTC is limited to the cost of past power purchase agreements that were being collected in rates on December 20, 1995, and then only for so long as the original term of the agreement.

The circumstances that prompted the Legislature to authorize limited cost recovery through CTC and Ongoing CTC are long past. The transition to a competitive market ended over 10 years ago when the Commission suspended the ability of customers to enter into direct access contracts.¹¹ The suspension remains in place, except for the limited increases in direct access load prescribed in 2009 legislation, Senate Bill 695.¹² Even with this limited resumption of direct access, the IOUs continue to be responsible for procuring power for their customers.

The continued imposition of Ongoing CTC creates tremendous rate uncertainty and has a chilling effect on competition, to the detriment of California customers. The need for CTC has passed, and the Commission should grant the Petition and open a new OIR to consider, among other issues raised in the Petition, setting an end date or developing a plan for phasing out Ongoing CTC.

IV. A New OIR Is Required to Address the Important Issues Raised in the Petition.

For several years, the Districts requested in PG&E’s annual electric resource recovery account (“ERRA”) and generation non-bypassable charges forecast proceeding that the Commission set an end date or develop a plan for phasing out Ongoing CTC. Each time, the Commission determined that that issue was outside the scope of the proceeding.¹³ More recently, the POU Parties submitted comments on the proposed decision issued in PG&E’s 2013 ERRA application proceeding (A.12-06-002) recommending that the Commission modify the

⁹ Cal. Pub. Util. Code § 367.

¹⁰ Cal. Pub. Util. Code § 367(a).

¹¹ D.01-09-060.

¹² Cal. Pub. Util. Code § 365.1(b).

¹³ D.08-12-029, Finding of Fact 8; Scoping Memo and Ruling of Assigned Commissioner in A.09-06-001 (August 17, 2009), p. 4; Scoping Memo and Ruling of Assigned Commissioner in A.10-05-022 (August 4, 2010), pp. 3-4.

proposed decision to provide that the Commission would consider setting an end date or other means of phasing out stranded cost recovery through Ongoing CTC in any rulemaking opened to address this Petition, or another appropriate proceeding. In its final decision, the Commission stated that the POU Parties' concerns "are addressed in the recently filed Petition for Rulemaking."¹⁴

Because this important issue has adversely affected customers of the Districts for years, and has the potential to do so indefinitely, the Districts most recently asked the Commission in Phase I of PG&E's 2014 General Rate Case ("GRC") (A.12-11-009) to confirm that it will be considered in this Petition proceeding, or identify any other proceeding where it will be considered, including the PG&E GRC proceeding.¹⁵ The Commission has not yet addressed that request.

This Petition presents the Commission with the ideal opportunity to establish the forum for addressing the end or phase out of Ongoing CTC. California customers should not have to live a minute longer with the rate uncertainty and volatility associated with Ongoing CTC, or its adverse effects on competitive markets. Ongoing CTC has long outlived its purpose and it needs to end.

V. Conclusion.

The POU Parties respectfully request that the Commission grant the Petition and open a new OIR to consider, among other things, setting an end date or developing a plan for phasing out Ongoing CTC.

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¹⁴ D.12-12-008, p. 12, Conclusion of Law 8, and Ordering Paragraph 9.

¹⁵ Prehearing Conference Statement of the Districts (A.12-11-009), pp. 2-3.